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MLR, LLC

#23

# Fax

**To:** Special Programming Examiner

**From:** Charles M. Leedom, Jr. *CL*

Krista Zele

**Fax:** 703 305 3991

**Pages:** 13 (including this page)

**Phone:** 703 305 4701

**Date:** November 15, 2002

**Re:** In re App. of Sairton et. al.

**CC:**

Ser. No. 09/392,676

Filed: September 8, 1999

For: Apparatus and Methods for

Networking Omni-modal Radio Devices

☒ **Urgent**    ☐ **For Review**    ☐ **Please Comment**    ☐ **Please Reply**    ☐ **Please Recycle**

Please place the attached communication in the above identified application.

RECEIVED

NOV 16 2002

Special Program Unit  
Group 700

Attorney Docket No. 740301-411

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Joseph B. SAINTON et al.

Serial No : 09/392,676

Filed : September 8, 1999

For : APPARATUS AND METHODS FOR  
NETWORKING OMNI-MODAL RADIO  
DEVICESSpecial Programming  
Examiner:  
Krista ZeleTechnology Center:  
2600

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NOV 16 2002

REQUEST LETTERSpecial Program Unit  
Group 700Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

By this letter the undersigned is providing evidence of recent involvement of this application in litigation and is requesting that the subject application be afforded expedited consideration as provided for in Section 1442 of the MPEP.

This application seeks to reissue U.S. Patent No. 5,761,621. Attached is a copy of a complaint filed and served only last week by Nokia, Inc. and Nokia Corporation seeking a declaration of non-infringement of, among others, U.S. Patent No. 5,761,621. Under the terms of Section 1442 of the MPEP this application is now believed to be entitled to be taken up for action ahead of other "special" applications (such as those defined in Section 708.01) and ahead of other reissue applications not involved in litigation.

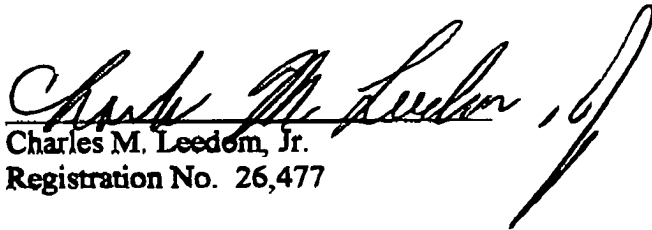
REMARKS

The patience and courtesies extended by Special Programming Examiner Zele in her telephone message of yesterday is acknowledged with appreciation. The undersigned had wanted to speak with Examiner Zele about the attached complaint and its effect on workload prioritization for the Patent and Trademark Office. The undersigned is entirely sympathetic to the burdens placed on SPE's by their extensive case load and is in no way seeking to add further to that burden. The undersigned does wish to make of record, however, that the subject reissue

application has now become involved in litigation by virtue of service of the attached complaint and asks, respectfully, that this additional information be taken into consideration if it is deemed relevant.

Respectfully submitted,

Date: Apr. 15, 2002

  
Charles M. Leedom, Jr.  
Registration No. 26,477

MLR, LLC  
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Falls Church, VA  
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Fax: (703) 241-5733

CML/cml

**UNITED STATES DISTRICT COURT**

Northern District of Texas

NOKIA INC., a Delaware corporation,  
and NOKIA CORPORATION, a  
Finnish corporation,

Plaintiffs,

**SUMMONS IN A CIVIL CASE**

v.

MLR, LLC, a Virginia limited liability  
company,

**CASE NUMBER: 3-02CV-2356R**

Defendant.

TO: (Name and address of Defendant)

MLR, LLC  
c/o Charles M. Leedom, Jr., Registered Agent for Service  
8180 Greensboro Drive  
Suite 800  
McLean, Virginia 22102

**YOU ARE HEREBY SUMMONED** and required to serve upon PLAINTIFFS' ATTORNEY

Michael J. Newton  
Jones, Day, Reavis & Pogue  
2727 N. Harwood Street  
Dallas, Texas 75201-1515

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

**CLERK OF COURT**

NOV 7 2002

CLERK

DATE

(By) Amanda Shell  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**NOKIA INC., a Delaware corporation, and  
NOKIA CORPORATION, a Finnish  
corporation,**

**Plaintiffs,**

**v.**

**MLR, LLC, a Virginia limited liability  
company,**

**Defendant.**

OCT 25 2002  
CLERK, U.S. DISTRICT COURT  
By \_\_\_\_\_  
Deputy

Case No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY RELIEF**

**JURY TRIAL DEMANDED**

Plaintiffs NOKIA INC., a Delaware corporation, and NOKIA CORPORATION, a Finnish corporation (collectively "NOKIA"), bring this action and hereby allege as follows:

**NATURE OF ACTION**

1. This is a Declaratory Judgment action for a declaration of non-infringement of U.S. Patent Nos. 4,972,457; 5,127,041; 5,249,218; 5,353,334; 5,367,563; 5,640,444; 5,761,621; 5,854,985; 6,134,453; and reissued Patent Nos. 34,034 and 37,141 (collectively, the "MLR Patents").
2. NOKIA INC. is a corporation organized under, and existing by virtue of, the laws of the state of Delaware, with its principal place of business located in Irving, Dallas County, Texas.
3. NOKIA CORPORATION is a corporation organized under, and existing by virtue of, the laws of Finland, with its principal place of business located in Espoo, Finland.

4. On information and belief, NOKIA alleges that MLR, LLC ("MLR") is a limited liability company organized under, and existing by virtue of, the laws of the state of Virginia, with its principal place of business located in McLean, Virginia.

#### **JURISDICTION AND VENUE**

5. This Court has personal jurisdiction over MLR. MLR has purposefully availed itself of the laws of the State of Texas and has engaged in business activities in the State of Texas and in this judicial district. Upon information and belief, MLR's business activities in the State of Texas have been continuous and systematic. Further, MLR has purposefully directed its activities at residents of Texas, and Nokia's plea for declaratory relief arises out of or relates to MLR's activities within Texas. Moreover, the assertion of personal jurisdiction over MLR is both reasonable and fair.

6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 2201, 2202, 1331 and 1338, as a declaratory judgment action arising under the Patent Laws, Title 35 of the United States Code. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400.

7. In a series of correspondence, MLR alleged that certain products manufactured by NOKIA infringe one or more of the claims of the MLR Patents. MLR has stated its intention to seek legal protection from NOKIA's alleged infringement. This case thus presents an actual controversy within 28 U.S.C. § 2201.

#### **FACTUAL ALLEGATIONS**

8. NOKIA is, and at all times relevant to the matters alleged in this Complaint was, engaged in the business of, among other things, researching, developing, designing, producing, and marketing various wireless telecommunications devices and associated technologies.

9. On information and belief, NOKIA alleges that MLR is in the business of developing technology allegedly related to wireless communications and computer networks,

and licensing such technology to businesses throughout the United States, including businesses in Texas.

10. On information and belief, NOKIA alleges that MLR acquired at least some of the MLR Patents from an inventor and/or original assignee located in Texas. For example, the named assignee on the face of four of the MLR Patents is "Spectrum Information Technologies, Inc., Dallas, Tex."

11. On information and belief, NOKIA alleges that MLR claims to be the owner of all rights, title, and interest in the MLR Patents set forth in paragraph 1, above.

12. On information and belief, NOKIA alleges that each of the MLR Patents generally involves technology for telecommunications and computer networking.

13. NOKIA currently or in the past has manufactured and sold wireless communications devices that MLR has accused of infringement (the "NOKIA Accused Products"). Much of the technology incorporated into the NOKIA Accused Products is highly confidential and proprietary. Many of the Accused Nokia Products are offered for sale and sold in this judicial district, and other activities with respect to many of these products take place in this judicial district and in the State of Texas.

14. On December 8, 2000, MLR sent a notice to NOKIA in writing, at NOKIA's U.S. corporate headquarters in Irving, Texas, alleging that NOKIA's sale and distribution of multi-modal cellular telephones, with digital and analog data transfer capabilities, infringed one or more of the MLR Patents. MLR offered no specifics as to which of its patents were allegedly infringed, but explained that there were license agreements relating to the same patents NOKIA allegedly infringed, involving at least forty other businesses throughout the United States, including the Texas-based company Compaq Computer Corp.

15. In the December 8, 2000 letter, MLR touted its prior successes in prosecuting patent infringement cases and attempted to compel NOKIA into entering into a blanket license agreement for MLR's entire portfolio of patents, whereby NOKIA would ostensibly acquire rights to the MLR Patents it allegedly infringed.

16. NOKIA responded to MLR's charges in a letter dated January 15, 2001, stating that NOKIA had ordered the applicable patent file histories and would reply in due course.

17. On June 13, 2001, MLR sent another letter to NOKIA stating that the U.S. Patent and Trademark Office had issued an additional patent to MLR on April 17, 2001 (reissued Patent No. 37,141). MLR again attempted to solicit a blanket license agreement with NOKIA, stating that NOKIA was "in a good position to realize a competitive advantage by being among the first manufacturers to take a license covering cellular telephones."

18. NOKIA responded on July 19, 2001, after an initial study of the patents, declining the license offer but inviting MLR to provide more particular information and to discuss the matter further.

19. MLR sent another letter to NOKIA on August 14, 2001. With this letter, MLR for the first time supplied infringement claim charts comparing a few of the NOKIA Accused Products to certain MLR Patents. MLR again prompted NOKIA to enter into a blanket license agreement. MLR encouraged NOKIA to act quickly, stating the "MLR licensing program is designed to afford more favorable license terms to those manufacturers who are among the first to take a cellular handset license."

20. On June 4, 2002, through its retained litigation counsel, MLR sent NOKIA another letter, alleging patent infringement from NOKIA's sale of certain of the NOKIA Accused Products and accusing for the first time other NOKIA Accused Products. MLR's



counsel boasted of its legal prowess in the field of patent litigation, and proclaimed having obtained over four-hundred million dollars for its clients in "21 consecutive, multi-million dollar jury verdicts." Within the letter, MLR threatened NOKIA with litigation, stating, among other things, "MLR was recently required to file suit against U.S. Robotics, Samsung, Kyocera, Toshiba and Ericsson to enforce its patent rights." As such, MLR gave NOKIA a deadline to meet its demand to enter into a license agreement with MLR, or presumably face defending a lawsuit for patent infringement.

21. After NOKIA responded to the June 4, 2002 letter, MLR, through its litigation counsel, sent a letter to NOKIA on July 9, 2002, expanding MLR's infringement allegations and identifying still further NOKIA Accused Products. MLR also provided a list of companies that were allegedly licensed under MLR's intellectual property. Upon information and belief, at least three of the companies allegedly licensed under MLR's intellectual property are Texas-based corporations, namely Compaq Computer Corp., Data Race, Inc. and Silicon Systems. Upon information and belief, NOKIA alleges that at least these companies have paid patent royalties to MLR.

22. After NOKIA responded to MLR's July 9, 2002 letter, MLR's litigation counsel sent yet another letter to NOKIA on August 29, 2002, specifying other details regarding MLR's infringement allegations. MLR also listed certain pending patent applications. On September 26, 2002, MLR, through its litigation counsel, provided NOKIA with additional infringement claim charts pertaining to one of MLR's alleged pending patent applications.

23. After further correspondence between NOKIA and MLR, MLR's litigation counsel sent a letter to NOKIA dated October 2, 2002 attaching additional infringement claim

charts. In that letter, MLR counsel stated, "I think it is important to note that we have never considered it necessary to have a debate on the question of infringement."

24. NOKIA continues to make, use, sell, and/or offer for sale many of the NOKIA Accused Products that MLR incorrectly alleges infringe the MLR Patents. As a result, NOKIA is under a reasonable and serious apprehension that it will imminently face a lawsuit by MLR for infringement of one or more of the MLR Patents.

25. An actual controversy exists between NOKIA and MLR concerning whether NOKIA infringes the MLR Patents.

**CLAIM FOR RELIEF  
(NON-INFRINGEMENT)**

26. NOKIA hereby realleges and incorporates by this reference paragraphs 1 through 25 above as though fully set forth herein.

27. MLR has alleged that NOKIA Accused Products infringe the MLR Patents, and MLR has provided NOKIA with infringement claim charts pertaining to certain NOKIA Accused Products and certain MLR Patents. Thus, MLR contends that NOKIA makes and sells products that infringe one or more claims of the MLR Patents under 35 U.S.C. § 271.

28. NOKIA disputes MLR's allegations of patent infringement.

29. Each of the claims of each of the MLR Patents must be restricted to a combination that includes all of the particular, specific structural, method, protocol, and process details called for in the specifications, significant details of which are not embodied in the NOKIA Accused Products, or the process used to manufacture any product or process used or sold by NOKIA.

30. The processes used by NOKIA for producing the NOKIA Accused Products are substantially different from any of the processes taught and claimed in the MLR Patents, do not

include all of the elements of any of the claims of the MLR Patents and their equivalents, and hence do not infringe any of the claims of the MLR Patents.

31. The NOKIA Accused Products also differ substantially from any of the products taught and claimed in the MLR Patents, do not include all of the elements of any of the claims of the MLR Patents and their equivalents, and hence do not infringe any of the claims of the MLR Patents.

32. Further, by reason of the proceedings in the Patent and Trademark Office during the prosecution of the applications which resulted in the MLR Patents as shown by the file histories thereof, MLR is estopped to claim for such patents a construction that would cause said patents to cover or include any product manufactured, used, or sold or any process or method used by NOKIA.

33. NOKIA seeks a declaration that the MLR Patents are not, and have not been, infringed by NOKIA or any NOKIA Accused Products.

34. Because there exists a real and justiciable controversy regarding infringement, this Court should make declarations that NOKIA and the NOKIA Accused Products do not infringe the disputed claims of patent infringement for the MLR Patents so that the parties can conduct their affairs in accordance with their legal rights and obligations.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs NOKIA INC. and NOKIA CORPORATION request the following relief:

1. That the Court declare that NOKIA INC. and NOKIA CORPORATION have not infringed, induced others to infringe, or contributed to infringement of any of the claims of U.S. Patent Nos. 4,972,457; 5,127,041; 5,249,218; 5,353,334;

5,367,563; 5,640,444; 5,761,621; 5,854,985; 6,134,453; and reissued Patent Nos. 34,034 and 37,141;

2. That the Court enjoin MLR, its officers, directors, agents, counsel, servants, and employees and all persons in active concert or participation with any of them, from charging infringement of or instituting any action for infringement of U.S. Patent Nos. 4,972,457; 5,127,041; 5,249,218; 5,353,334; 5,367,563; 5,640,444; 5,761,621; 5,854,985; 6,134,453; and reissued Patent Nos. 34,034 and 37,141 against NOKIA INC. or NOKIA CORPORATION or any of their customers;
3. That the Court find this is an exceptional case under 35 U.S.C. § 285 and award NOKIA INC. and NOKIA CORPORATION their reasonable attorney fees, expenses, and costs in this action; and
4. That the Court award such other and further relief as the Court deems just and proper.

DATED: October 25, 2002

JONES, DAY, REAVIS & POGUE

By: Michael J. Newton

Kenneth R. Adamo  
State Bar No. 00846960

Robert W. Turner  
State Bar No. 20329000

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